

REMARKS

Claims 7 and 8 are amended herein to remove the table structures.

The examiner rejects claims 1-8 under 35 USC §102(b) as anticipated by Takada et al. (US 4,965,151). This rejection is respectfully traversed. Applicants submit that the examiner's burden to demonstrate inherency has not been met.

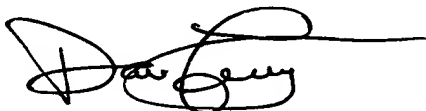
Takada et al. disclose a solid-state electrochemical cell in which at least one electrode contains a compound oxide of the formula  $\text{Ag}_x\text{V}_2\text{O}_{5-y}$ , with  $0.6 \leq x \leq 0.8$  and  $0 \leq y < 5$ . The precise physical structure of the oxides employed is neither disclosed nor hinted at in Takada. Nevertheless, the examiner states that "according to its crystal morphology," the disclosed compound inherently possesses x-ray diffraction, surface area, and other characteristics identical to those recited in the present claims.

As the present specification indicates, however, oxides of the above formula vary in their crystalline structure (see, e.g., p.3:35-4:14). To support a rejection based on inherency, the examiner shoulders the burden to set forward reasoning or extrinsic evidence to "make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill" (*In re Robertson*, 49 USPQ2d 1949 (Fed. Cir. 1999)). Given the potential variability in crystal structure for the oxides disclosed in Takada, it cannot fairly be said that the present claim elements are *necessarily* present in those oxides. Without additional reasoning or extrinsic evidence, the examiner's burden has not been met. Applicants respectfully request that the rejection of claims 1-8 under 35 USC §102(b) be withdrawn.

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In view of the amendments and remarks, applicants respectfully submit that the present claims are in condition for allowance, and request that the application be passed to issuance.

Respectfully submitted,  
KEIL & WEINKAUF

A handwritten signature in black ink, appearing to read 'David C. Liechty', with a long horizontal flourish extending to the right.

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**COPY OF ALL CLAIMS**

1. (previously amended): A multimetal oxide of the formula I



where M is a metal selected from the group consisting of Li, Na, K, Rb, Cs, Tl, Mg, Ca, Sr, Ba, Cu, Zn, Cd, Pb, Cr, Au, Al, Fe, Co, Ni and/or Mo,

a is from 0.3 to 1.9 and

b is from 0 to 0.5, with the proviso that the difference (a-b) is greater than or equal to 0.1 and

c is from 0 to 20 and

x is a number determined by the valence and amount of elements different from oxygen in the formula I,

which has a crystal structure giving an X-ray powder diffraction pattern which displays reflections at the lattice spacings d of  $15.23 \pm 0.6$ ,  $12.16 \pm 0.4$ ,  $10.68 \pm 0.3$ ,  $3.41 \pm 0.04$ ,  $3.09 \pm 0.04$ ,  $3.02 \pm 0.04$ ,  $2.36 \pm 0.04$  and  $1.80 \pm 0.04$  Å.

2. (original): A multimetal oxide as claimed in claim 1 which has a fibrous crystal morphology having a mean ratio of fiber diameter to fiber length of less than 0.6.

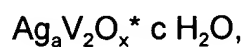
3. (original): A multimetal oxide as claimed in claim 1 which has a specific surface area determined by the BET method of from 3 to 250 m<sup>2</sup>/g.

4. (original): A multimetal oxide as claimed in claim 1 in which a is from 0.5 to 1.0, b is

from 0 to 0.3 and c is from 0 to 5.

5. (original): A multimetal oxide as claimed in claim 1 in which a is from 0.6 to 0.9, b is from 0 to 0.1 and c is from 0 to 1.

6. (original): A multimetal oxide as claimed in claim 1 and having the formula



where a is from 0.6 to 0.9, x is as defined in claim 1 and c is from 0 to 5.

7. (currently amended): A multimetal oxide as claimed in claim 1 whose X-ray powder diffraction pattern displays the following 17 reflections at the specified lattice spacings d [Å]:

| Reflections | d [Å]       |
|-------------|-------------|
| 1           | 15.23 ± 0.6 |
| 2           | 12.16 ± 0.4 |
| 3           | 10.68 ± 0.3 |
| 4           | 5.06 ± 0.06 |
| 5           | 4.37 ± 0.04 |
| 6           | 3.86 ± 0.04 |
| 7           | 3.41 ± 0.04 |
| 8           | 3.00 ± 0.04 |
| 9           | 3.02 ± 0.04 |
| 10          | 2.58 ± 0.04 |
| 11          | 2.48 ± 0.04 |
| 12          | 2.42 ± 0.04 |
| 13          | 2.36 ± 0.04 |
| 14          | 2.04 ± 0.04 |
| 15          | 1.93 ± 0.04 |
| 16          | 1.80 ± 0.04 |



Reflection 1 at  $15.23 \pm 0.6$ ; 2 at  $12.16 \pm 0.4$ ; 3 at  $10.68 \pm 0.3$ ; 4 at  $5.06 \pm 0.06$ ; 5 at  $4.37 \pm 0.04$ ; 6 at  $3.86 \pm 0.04$ ; 7 at  $3.41 \pm 0.04$ ; 8 at  $3.09 \pm 0.04$ ; 9 at  $3.02 \pm 0.04$ ; 10 at  $2.58 \pm 0.04$ ; 11 at  $2.48 \pm 0.04$ ; 12 at  $2.42 \pm 0.04$ ; 13 at  $2.36 \pm 0.04$ ; 14 at  $2.04 \pm 0.04$ ; 15 at  $1.93 \pm 0.04$ ; 16 at  $1.80 \pm 0.04$ ; 17 at  $1.55 \pm 0.04$ .

8. (currently amended): A multimetal oxide as claimed in claim 7 whose reflections 1 to 17 have the following approximate relative intensities ( $I_{rel}$  [%]):

| Reflections | $I_{rel}$ [%] |
|-------------|---------------|
| 1           | 16            |
| 2           | 11            |
| 3           | 18            |
| 4           | 11            |
| 5           | 23            |
| 6           | 16            |
| 7           | 80            |
| 8           | 61            |
| 9           | 100           |
| 10          | 23            |
| 11          | 24            |
| 12          | 23            |
| 13          | 38            |
| 14          | 26            |
| 15          | 31            |
| 16          | 43            |
| 17          | 36            |

Reflection 1: 16  $I_{rel}$  [%]; 2: 11  $I_{rel}$  [%]; 3: 18  $I_{rel}$  [%]; 4: 11  $I_{rel}$  [%]; 5: 23  $I_{rel}$  [%]; 6: 16  $I_{rel}$  [%]; 7: 80  $I_{rel}$  [%]; 8: 61  $I_{rel}$  [%]; 9: 100  $I_{rel}$  [%]; 10: 23  $I_{rel}$  [%]; 11: 24  $I_{rel}$  [%]; 12: 23

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I<sub>rel</sub> [%]; 13: 38 I<sub>rel</sub> [%]; 14: 26 I<sub>rel</sub> [%]; 15: 31 I<sub>rel</sub> [%]; 16: 43 I<sub>rel</sub> [%]; 17: 36 I<sub>rel</sub> [%].

Claims 9-26 (Withdrawn).